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## **OLR Bill Analysis**

**sHB 6438 (as amended by House "A" and "B")\***

### ***AN ACT CONCERNING PROBATE COURT OPERATIONS.***

#### **SUMMARY:**

The bill makes several changes to the probate law. Specifically, it:

1. eliminates the requirement that the probate court administrator, within available resources, establish a regional children's probate court in the New Haven area and allows him to create seven, rather than six, additional such courts in regions he designates (§ 1);
2. extends worker's compensation coverage to probate court judges (§ 2);
3. sets a daily \$20 fee for copying probate records with a hand-held scanner, as that term is defined in the Freedom of Information Act (see BACKGROUND) (§ 3);
4. specifies that in determining the order of priority of claims against a decedent's estate, funeral expenses have first priority and expenses of settling the estate second priority (current law gives them equal priority) (§§ 4-7);
5. makes changes to confidentiality requirements for several children's probate matters (§§ 8, 9);
6. allows the probate court administrator to establish a fee schedule for anyone seeking access or information from an online probate court data processing system (§ 10);
7. makes changes and clarifications regarding how much time parties have to appeal probate matters (§§ 11-14);
8. makes changes regarding estate settlement costs for people who

die while domiciled in another state; and

9. allows probate courts to appoint a temporary administrator of a decedent's estate regarding the disclosure of financial or medical information for specified purposes.

The bill also makes minor, technical, and conforming changes.

\*House Amendment "A" adds the provisions concerning estate settlement costs for people who are domiciled in another state upon death.

\*House Amendment "B" adds the provisions allowing a temporary administrator of an estate regarding the disclosure of financial or medical information.

EFFECTIVE DATE: July 1, 2011 for the provisions on children's probate courts, worker's compensation, and the priority of claims; October 1, 2011 for those on hand-held scanner and data processing fees, record confidentiality, appeal periods, and temporary administrators; and upon passage for the provisions concerning estate settlement costs for out-of-state domiciliaries and a technical change.

## **§ 1 — REGIONAL CHILDREN'S PROBATE COURTS**

Current law (1) requires the probate court administrator, within available resources, to establish a regional children's probate court in the area consisting of the Branford, East Haven, Hamden, Milford, New Haven, North Branford, North Haven, Orange, West Haven, and Woodbridge probate districts and (2) permits him to create six additional children's probate courts in regions he designates. The bill eliminates the requirement that he create such a district in the New Haven area, and allows him to create seven such courts.

By law, regional children's probate courts handle matters involving guardianship, termination of parental rights, adoption, paternity, emancipation, and voluntary commitment of children with serious mental health needs to the Department of Children and Families (DCF).

**§§ 8, 9 — CONFIDENTIALITY AND DISCLOSURE OF RECORDS IN CHILDREN'S AND ADOPTION MATTERS**

Under current law, the state must provide each probate court with an index and book to record specified information related to matters concerning termination of parental rights, removal of a parent as guardian, appointment of a statutory parent, and adoption. Probate courts must maintain locked files with all court filings regarding these cases in sealed envelopes, marked with only certain names and the general subject matter of the case. Anyone who discloses information in these indexes, books, and papers, except as specifically authorized by law, is subject to a fine of up to \$500, up to six months' imprisonment, or both.

The bill deletes these requirements and penalties, and makes a related conforming change (§ 9). It specifies that all records of cases related to these matters, as well as those of temporary guardianship and emancipation of a minor, are confidential and subject to being inspected by or disclosed to only the following people or entities, in addition to the parties or their counsel:

1. DCF;
2. a licensed child-placing agency involved in the case;
3. a state judge or court employee who needs access to the records to perform his or her duties;
4. the office of the Probate Court Administrator; and
5. courts of other states under the Uniform Child Custody Jurisdiction and Enforcement Act.

The law already specifies many circumstances in which these records may be disclosed to DCF and licensed child-placing agencies. (The records are already available for inspection by courts involved in the case.)

The bill specifies that existing law's provisions regarding access to adoption records apply only to adoption records, and not to other

records that concern removal of a parent as guardian, a petition for termination of parental rights, or an application for a statutory parent matters.

## **§ 10 — ONLINE DATA PROCESSING SYSTEM**

The bill allows the probate court administrator to set a fee schedule for anyone seeking online access to, or information (in any medium) stored in, a data processing system the administrator's office operates. The fees must be deposited in the probate court administration fund.

The bill specifies that the fee schedule may include reasonable charges for personal services, fringe benefits, supplies, and other expenses related to maintaining, improving, and providing these data processing services. These other expenses include the costs of program modifications, training expenses, central processor user time, and equipment rental and maintenance.

## **§§ 11-14 — PROBATE APPEAL PERIODS**

By law, appeals to the Superior Court from probate orders, denials, or decrees, unless the law provides otherwise, must be taken within 30 days after the mailing of the order, denial, or decree. The court is allowed an extra 15 days (for a total of 45 days) to consider specified matters, such as many provisions regarding conservators or guardians (see BACKGROUND).

The bill specifies that these 30- or 45-day appeal periods, unless the law provides otherwise, apply when the appealing party is an adult who (1) is present, (2) has legal notice to be present, (3) has been given notice of his or her right to request a hearing, or (4) has filed a written waiver of the right to a hearing. Current law provides that such people must appeal within 30 days, unless the law provides otherwise. By law, unchanged by the bill, adults have 12 months to appeal most probate matters if they did not have notice to be present and were not present, or were not given notice of their right to request a hearing (shorter time frames apply for appeals from adoption decrees and orders terminating parental rights).

The bill eliminates a 12-month appeal period for nonresidents who were not present and did not have legal notice to be present, and does not specify an appeal period for such people. Thus, the same appeal periods that apply for residents in this situation would apply to them.

The bill eliminates the current 30-day limit for appealing a probate order for the payment of claims or dividends on claims against an insolvent estate. The bill does not specify a time frame for such appeals. Thus, they would be subject to the law's default 30-day limit, unless another situation applies (for example, if the appealing party did not receive notice of the right to request a hearing).

The bill specifies that for minors who have a guardian or guardian ad litem appointed and qualified by a Connecticut probate court when a probate order, denial, or decree was made, the 30- or 45-day time frames described above apply to appeals brought by the minor or someone on the minor's behalf if the guardian or guardian ad litem had legal notice of the time and place of the hearing. Current law provides a one-month time frame for bringing such appeals.

The law allows probate court judges, probate court clerks, and fiduciaries to send notice of probate court orders, denials, or decrees to adults or guardians or guardians ad litem of minors who did not have legal notice of the hearing on the related proceeding and who were affected by it. The bill allows appeals within the 30- or 45-day time frames described above, rather than one month, after such notice is received.

By law, except as provided above, someone who was a minor when a probate order, denial, or decree was issued can bring an appeal up to 12 months after he or she turns 18.

The bill provides that a probate court order, denial, or decree is not invalidated due to the judge's disqualification unless an appeal is taken within the various time frames described above, rather than just 30 days.

By law, when a probate appeal is based on a hearing that was on the

record, the probate court must transcribe any portion that has not been transcribed within 30 days of service, unless the Superior Court allows additional time. The bill specifies that this requirement applies only to appeals subject to the 30- or 45-day time frames specified above.

### **ESTATE SETTLEMENT FOR PEOPLE DOMICILED OUT-OF-STATE UPON DEATH**

The bill specifies that in a proceeding to settle the estate of someone who was not domiciled in Connecticut at the time of his or her death, the person is deemed to have been domiciled here for purposes of computing estate settlement costs, unless the probate court determines that the in-state proceedings are ancillary to those in the person's state of domicile. Under the bill, this applies whether the person died with a will or intestate (i.e., without a will).

Current law provides that for the estates of people who die while not domiciled in Connecticut (whether testate or intestate), estate settlement costs are determined on the basis of an assumed gross taxable value equal to (1) the actual gross taxable estate, plus (2) the value in the estate's inventory of all property in it which is not part of the actual gross taxable estate, excluding insurance proceeds exempt by law from taxation (e.g., life or accident insurance). Under the bill, these provisions no longer apply to intestate estates.

By law, part of the calculation for determining the basis for settlement costs for a decedent's estate is his or her gross estate for estate tax purposes (see BACKGROUND).

### **TEMPORARY ADMINISTRATORS**

By law, probate courts may appoint a temporary administrator upon the application of a creditor or other party interested in a deceased person's estate to protect the property until the will is probated or an administrator is appointed. The bill also allows anyone with an interest in a deceased person's estate, and who needs financial or medical information about the deceased person for specified purposes, to apply to the probate court for the appointment of a temporary administrator.

Under the bill, the permissible purposes are:

1. investigating a potential cause of action of the estate or specified people or
2. a potential claim for workers' compensation, insurance, or other benefits in favor of the estate or such people.

Under the bill, people interested in a decedent's estate are the person's surviving spouse, children, heirs, or other dependents.

The bill gives the probate court discretion to grant the application and appoint a temporary administrator for such purposes if the court finds that doing so would be in the interests of the estate or other person as specified above. The bill also gives the probate court discretion regarding whether to require the administrator to post a bond. (By contrast, the law requires a bond from temporary administrators appointed to protect the property until the will is probated or an administrator is appointed).

The court must limit the temporary administrator's authority to disclose information he or she maintains, as appropriate. The court may issue an appropriate order for the disclosure of the information.

The bill requires that an order appointing such a temporary administrator, as well as any certificate the court clerk issues for the appointment of a fiduciary, must specify (1) the duration of the temporary administrator's appointment and (2) that the temporary administrator lacks authority over the deceased person's assets.

## **BACKGROUND**

### ***Hand-held Scanners***

Under the Freedom of Information Act, members of the public must be allowed to copy public records using a hand-held scanner, defined as a battery operated electronic scanning device that leaves no marks or impressions on the record and that does not unreasonably interfere with the operations of the agency that maintains the record. It allows public agencies to charge up to \$20 each time someone copies records

using such a scanner (CGS § 1-212(g)).

***Probate Matters Subject to 45-Day Appeals Period***

By law, appeals from probate orders, denials, or decrees for the following matters must be taken within 45 days after the mailing of the order, denial, or decree, unless the law provides otherwise:

1. appointing a guardian or conservator for a veteran or beneficiary of veterans' benefits;
2. compensation of a guardian or conservator of a social services beneficiary, veteran, or beneficiary of veterans' benefits;
3. investment of funds in insurance and annuity contracts by a conservator or guardian of the estate of a ward, conserved person, or incapable person;
4. payment by a guardian or conservator of administrative expenses of a deceased protected person;
5. many provisions regarding conservators, such as naming a conservator for future incapacity, application for and release from voluntary representation, appointment of involuntary representation, appointment of temporary conservators, duties of conservators, and termination of conservatorship;
6. appointing guardians of people with mental retardation, their powers and duties;
7. sterilization; and
8. a guardian's or conservator's petition on competency to vote (CGS § 45a-186(a)).

***Estate Settlement Fee Basis, Scale of Fees, and Minimum Fee***

Probate fees for settling an estate are based on the estate's value. By law, the estate value for fee purposes is (1) the greater of (a) the gross estate for succession tax purposes, (b) the inventory (the probatable estate), (c) the Connecticut taxable estate, or (d) the gross estate for



estate tax purposes, plus (2) all damages recovered for injuries resulting in death, minus (3) certain hospital and medical expenses and any attorneys fees and costs incurred in recovering the damages. The value for fee purposes must be reduced by 50% of any property passing to the surviving spouse. The minimum fee for settling a full estate valued at less than \$10,000 is \$150 (CGS § 45a-107).

PA 10-184 changed the definition of “gross estate for estate tax purposes” for probate proceedings to settle a decedent’s estate begun on or after January 1, 2011. For someone who died while domiciled in Connecticut, the act excludes the fair market value of the person’s real or tangible personal property located outside of Connecticut. For someone who died while not domiciled in Connecticut, but who owned real or tangible personal property in Connecticut at his or her death, the act includes only the fair market value of such property; any property located outside Connecticut is excluded from the computation.

Table 1 shows the probate fees for proceedings begun on or after April 1, 1998.

**Table 1: Probate Fees For Settling Estates**

<i><b>Basis For Computation</b></i>	<i><b>Fee</b></i>
\$0 – \$500	\$25
\$501 – \$1,000	\$50
\$1,000 – \$10,000	\$50, plus 1% of the excess over \$1,000
\$10,000 – \$500,000	\$150, plus 0.35% of the excess over \$10,000
\$500,000 – \$4,754,000	\$1,865, plus 0.25% of the excess over \$500,000
\$4,754,000 and over	\$12,500

## **COMMITTEE ACTION**

### Judiciary Committee

Joint Favorable Substitute

Yea 41 Nay 0 (04/05/2011)

### Finance, Revenue and Bonding Committee

Joint Favorable

Yea 48 Nay 0 (05/17/2011)